

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer ES 17149.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents-- Oil and Gas Leases: Applications: Drawings

Where a drawing entry card to lease a parcel of land for oil and gas was prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent were required to be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

2. Administrative Practice--Oil and Gas Leases: Applications: Generally--Regulations: Applicability

Where an oil and gas lease offer, unaccompanied by statements as required by D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978) was filed prior to November 9, 1978, the Pack holding will not retroactively be applied to the offer.

APPEARANCES: Jason R. Warren, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Patricia Ann DeSalvo appeals from a decision dated June 19, 1979, by the Eastern States Office, Bureau of Land Management (BLM), rejecting her oil and gas lease offer, ES 17149, which was drawn with first priority in the April 1977 simultaneous oil and gas drawing.

The offer was rejected for lack of compliance with 43 CFR 3102.6-1, which states that if the offer is signed by an agent or attorney-in-fact on behalf of the offeror, separate statements of interest by both the offeror and the agent must be filed.

On December 21, 1978, BLM issued a decision styled "Evidence Required," requesting that the offeror answer the questions on Attachment A (attached to the decision) and return it to BLM signed and dated. Appellant returned Attachment A to BLM on January 26, 1979. The completed attachment indicated that the offeror had neither selected the parcel nor affixed her own signature to the offer.

By decision dated June 19, 1979, 1/ BLM rejected appellant's offer to lease stating as reason for such rejection, "The statement of interest required by 43 CFR 3102.6-1(a)(2) was not filed," citing inter alia, D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978). See also Ray H. Thames, 31 IBLA 167 (1977).

This appeal followed. In appellant's statement of reasons for appeal she adopts the arguments used by appellant in H. R. Delasco, Inc., 39 IBLA 194 (1979), and D. E. Pack, supra. These arguments have been thoroughly discussed in those decisions and no further discussion appears warranted.

[1] In view of the Board's discussions in H. R. Delasco, Inc., supra; D. E. Pack, supra; and Ray H. Thames, supra, we see no compelling reason to depart from our holding in those decisions. As we held therein, where a drawing entry card to lease a parcel of land for oil and gas was prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer was signed by such agent or attorney-in-fact, the requirements of 43 CFR 3102.6-1 (1979) applied so that separate statements of interest by both the offeror and the agent were required to be filed, regardless of whether the signature was applied manually or mechanically. 2/

1/ In its decision, BLM also noted that the drawing entry cards (DEC's) filed by Frances DeSalvo and John Lewan Mason, second and third drawees, respectively, bear the same deficiency as that filed by appellant in the instant case. We feel it inappropriate to discuss this contention as no formal appeal is before us regarding the second and third drawees. We do wish to point out, however, that adjudication of DEC's should proceed seriatim from first priority through third priority. Until all Departmental appeals from a decision rejecting a DEC drawn with first priority have been exhausted, the State Office should not adjudicate a card drawn with second or third priority.

2/ We would note that under new regulations, published on May 23, 1980 (45 FR 35156 (May 23, 1980)), agency statements must be submitted for

[2] Subsequent to the Board's decision in these cases, however, judicial review of the Board's ruling was sought in a number of United States District Courts. In Runnells v. Andrus, 484 F. Supp. 1234 (D. Utah 1980) and Stewart Capital Corp. v. Andrus, No. C 79-123K (D. Wyo. Apr. 24, 1980), appeal pending, No. 80-1642 (10th Cir.) the District Courts affirmed the substantive rulings of the Board but held that this new interpretation could only be applied prospectively. In McDonald v. Andrus, Civ. No. 577-0533(c), (D. Miss. Jan. 29, 1980), the District Court affirmed the Board's decision in Ray H. Thames, supra. Subsequently, however, on appeal to the Fifth Circuit Court of Appeals, that Court reversed the decision of the District Court of Mississippi, and held that the Board's decision should not be retroactively applied. See McDonald v. Watt, supra, No. 80-3155, (5th Cir., Aug. 21, 1981). In Killian L. Huger, Jr., 52 IBLA 174 (1981), this Board announced that it would follow the court decisions in Runnells, supra, and Stewart Capital Corp., supra, and would accordingly not apply the Pack holdings to lease offers filed prior to November 9, 1978. Obviously, in light of the decision in McDonald v. Watt, supra, the same rule should apply herein. In the instant case, the offer to lease was filed in April 1977. Therefore, consistent with our decision in Killian L. Huger, Jr., supra, we are constrained to set aside the decision of the Eastern States Office.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case files are remanded for appropriate action.

James L. Burski
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge.

fn. 2 (continued) any applicant "receiving the assistance of any other person or entity which is in the business of providing assistance to participate in a Federal oil and gas lease program." 43 CFR 3102.2-6(a).

